

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-0646V

MICHAEL SMITH,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 17, 2024

Anne Carrion Toale, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioner.

Adam Nemeth Muffett, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On June 13, 2022, Michael Smith filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered Guillain-Barré syndrome (“GBS”) as a result of an influenza (“flu”) vaccine that was administered on October 19, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 15, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. On October 15, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$115,045.64 (comprised of \$90,000.00 for pain and suffering, \$45.64 for past unreimbursable expenses, and \$25,000.00 for lost wages). Proffer at 1-2. In the Proffer, Respondent

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$115,045.64 (comprised of \$90,000.00 in pain and suffering, \$45.64 in past unreimbursable expenses, and \$25,000.00 in lost wages) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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No. 22-646V

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ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On June 13, 2022, Michael Smith (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered from Guillain-Barré Syndrome (“GBS”), as the result of an influenza vaccine he received on October 19, 2019. Petition at 1, 3. On May 12, 2023, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a GBS Table injury, and on May 15, 2023, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF Nos. 24, 25.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$90,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$45.64. *See* 42 U.S.C. § 300aa-15(a)(1)(B).

Petitioner agrees.

C. Loss of Earnings

Evidence supplied by petitioner documents that he incurred past lost wages related to his vaccine-related injury. Respondent proffers that petitioner should be awarded lost wages in the amount of \$25,000.00. *See* 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following:¹ a lump sum payable of **\$115,045.64** in the form of a check payable to petitioner.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

JULIA M. COLLISON
Assistant Director
Torts Branch, Civil Division

/s/ Adam N. Muffett
ADAM N. MUFFETT
Trial Attorney
U.S. Department of Justice
Torts Branch, Civil Division
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 616-2895
Adam.muffett@usdoj.gov

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